

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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Twenty-One Sound Communications, Inc.)	File No. EB-03-KC-082
Licensee, KKAC(FM))	NAL/Acct. No. 200332560030
Vandalia, Missouri)	FRN 0006-1497-93
Flourissant, Missouri)	

FORFEITURE ORDER

Adopted: December 6, 2004

Released: December 8, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to Twenty-One Sound Communications ("Twenty-One"), licensee of Station KKAC(FM), Vandalia, Missouri, for willful and repeated violation of Section 73.1125 of the Commission's Rules ("Rules").¹ The noted violation involves Twenty-One's failure to maintain a presence at its main studio.

2. On October 6, 2003, the Commission's Kansas City, Missouri Office ("Kansas City Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Twenty-One for a forfeiture in the amount of seven thousand dollars (\$7,000).² Twenty-One filed its response to the NAL on November 17, 2003 and supplements thereto on December 9, 2003 and March 1, 2004.

II. BACKGROUND

3. On April 22, 2003, an agent from the Commission's Kansas City Office attempted to inspect Station KKAC during regular business hours. The studio building was locked and there was no indication that anyone was present. There were no posted business hours or telephone numbers to contact station personnel. The agent obtained a contact telephone number for the owner of Station KKAC from the Commission's antenna structure records. At this telephone number, the agent reached Twenty-One's President, Randy Wachter. The agent arranged to conduct an inspection of the KKAC transmitter and studio in Vandalia, Missouri on the following day.

4. On April 23, 2003, the agent conducted an inspection of Station KKAC's studio and transmitter. At the time of the inspection, the KKAC studio was closed to the public and no station employees were present except Mr. Wachter, who met the agent at the studio. The station appeared to be

¹ 47 C.F.R. § 73.1125.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332560030 (Enf. Bur., Kansas City Office, released October 6, 2003).

operated unattended and employed no staff at the studio or transmitter site. On May 21, 2003, the District Director of the Kansas City Office sent a Letter of Inquiry to Twenty-One to follow-up on issues raised during the inspection, to which Twenty-One responded on June 10, 2003.

5. On July 22, 2003, the agent went to the KKAC studio during regular business hours. The agent again found the studio locked and unattended. On October 6, 2003, the Kansas City Office issued a *NAL* for \$7,000 to Twenty-One for apparently willfully and repeatedly violating Section 73.1125 of the Rules. In its response to the *NAL*, Twenty-One seeks cancellation of the forfeiture based on it having a meaningful managerial presence, its history of compliance, and its inability to pay the forfeiture.

III. DISCUSSION

6. The forfeiture amount in this case was proposed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining Twenty-One’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶

7. Section 73.1125 of the Rules requires the licensee of a broadcast station to maintain a main studio at one of the following locations: (1) within the station’s community of license; (2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station’s community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license. In adopting the main studio rules, the Commission stated that the station’s main studio must have the capability to serve the needs and interests of the residents of the station’s community of license.⁷ To fulfill this function, a station must, among other things, maintain a meaningful presence at its main studio.⁸ The Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.⁹ The licensee need not have the same staff person and manager at the studio, as long as there is management and staff presence there during normal business hours.¹⁰ Although management personnel need not be “chained to their desks” during normal business hours, they must “report at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base.”¹¹ On April 22 and 23, and July 22, 2003, the investigating agent found Station KKAC’s main studio without staff or management presence during normal business hours. On each of the three days, the agent found the studio locked and unoccupied.

8. In its response to the *NAL*, Twenty-One contests the *NAL*’s finding that it repeatedly and willfully violated Section 73.1125 of the Rules arguing that its staffing of Station KKAC was similar to

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

⁸ *Id.*

⁹ *Jones Eastern of the outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

¹⁰ *Id.*, 6 FCC Rcd at 3616 n.2; 7 FCC Rcd at 6800 n.4.

¹¹ *Id.*, 7 FCC Rcd at 6802.

that which was approved by the Commission in *Jones Eastern*. We do not agree. The staffing proposal ultimately approved by the Commission in *Jones Eastern* consisted of there being a full-time office worker and a full-time chief engineer, who would also act as the station's news director from 5:30 a.m. – 9:30 a.m. and 3:30 p.m. – 6:30 p.m. Monday through Friday.¹² Because the full-time chief engineer was also charged with managerial duties, e.g., doubling as the station's news director, his presence during specified hours satisfied the requirement of there being a full-time managerial presence at the main studio.¹³ In this case, Station KKAC's owner and two full-time employees used the studio as a home base, spent the bulk of their time away from the studio selling advertising, and checked back in at the end of each day to check up on things, write up orders and produce ads.¹⁴ There were also two volunteers who assisted the station, though apparently, not with any set schedule. Station KKAC's staffing on April 22, April 23, and July 22, 2003 left the station unattended during normal business hours. All of the employees came in in the morning, left for most of the day, and came back, at some point, at the end of the day. There was apparently no set schedule according to which the main studio would be staffed and on April 22, and 23, there were no hours posted to indicate to the public when it could expect to find the studio accessible.¹⁵ Further, in *Jones Eastern* it is true that the Commission stated that management personnel would not be required to remain "chained to their desks." However, this can not be construed to endorse Twenty-One's staffing of Station KKAC whereby all of the employees and volunteers "chose to not be chained to their desks,"¹⁶ thereby not leaving the station attended by anyone at all, not even a staff person. Therefore, we find that Twenty-One's staffing of Station KKAC violated Section 73.1125 of the Rules on April 22, April 23, and July 22, 2003.

9. In determining whether a violation of the Commission's Rules was willful, the issue is whether the person "knew he was doing the act in question, regardless of whether there was any intent to violate the law."¹⁷ Here, Twenty-One chose to have its employees out of the main studio for the bulk of their day, leaving the studio unstaffed for long periods of time. Twenty-One chose not to have its employees in the studio on some type of schedule which would provide for the requisite staffing of the main studio during regular business hours. Accordingly, we conclude that Twenty-One's violation of Section 73.1125 of the Rules was willful.¹⁸ Moreover, as we have found that Twenty-One violated Section 73.1125 of the Rules on April 22, April 23, and July 22, 2003, the violation was also repeated.¹⁹

10. Twenty-One claims to have a history of overall compliance with the Commission's Rules and seeks cancellation of the forfeiture on that basis. However, we find this not to be this case. In 1996, Twenty-One was the subject of a license revocation proceeding in which the station license for Station

¹² *Id.*, at 6800.

¹³ *Id.*, at 6801.

¹⁴ *NAL* response at page 4.

¹⁵ On July 22, 2003, there was a sign posted listing contact names and telephone numbers for studio information.

¹⁶ *NAL* response at page 5.

¹⁷ *Jerry Szoka*, 14 FCC Rcd 9857, 9865 (1999); *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991).

¹⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.* at 4388.

¹⁹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Co. supra*.

KFPS(AM), which was owned by Twenty-One, was cancelled because the station had been off the air for more than one year. Thus, Twenty-One does not have a history of compliance with the Commission's Rules. Moreover, even if Twenty-One did have a history of overall compliance with the Commission's Rules, reduction of the forfeiture, not cancellation, would be appropriate. However, as stated above, because we do not find Twenty-One to have a history of overall compliance, no reduction is warranted.

11. Finally, Twenty-One seeks cancellation of the forfeiture because of its inability to pay and submits federal tax returns for 1999, 2000, 2001 and 2002 in support of its request. Upon review of the financial documentation, we find that a reduction of the forfeiture to \$1,000 is appropriate.

12. Twenty-One has not provided information indicating that its main studio is now staffed in accordance with Section 73.1125 of the Rules. Accordingly, we require, pursuant to Section 308(b) of the Act,²⁰ that Twenty-One report to the Enforcement Bureau no more than thirty (30) days following the release of this *Order* how it has achieved compliance with Section 73.1125 of the Rules for its main studio. Twenty-One's report must be submitted in the form of an affidavit signed by an officer or director of Twenty-One.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²¹ Twenty-One Sound Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars (\$1,000) for its willful and repeated violation of Section 73.1125 of the Rules at station KKAC-FM.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, Twenty-One must submit the report described in paragraph 12, above, within thirty (30) days following the release of this *Order*, to the Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, SW, Room 7-A728, Washington, DC 20554, Attention: Jacqueline Ellington, Esq.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²² Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²³

²⁰ 47 U.S.C. § 308(b).

²¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²² 47 U.S.C. § 504(a).

²³ See 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Twenty-One Sound Communications, Inc. and its counsel Lee J. Peltzman, Esq., Shainis & Peltzman, Chartered, 1850 M Street, NW, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau